

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-disclosure Agreement (the "Agreement") is made and entered into effective as of this \_\_\_\_\_ by and between GVNW Consulting Inc. of Springfield, Illinois and Colorado Springs, Colorado and \_\_\_\_\_ (individually, a "Party" and collectively, the "Parties"). In consideration of the mutual covenants and conditions contained herein, to induce each Party to provide certain information (the "Discloser") to the other Party (the "Recipient") and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Confidential Information.** "Confidential Information" shall collectively refer to all information or material disclosed or provided by Discloser to Recipient, either orally or in writing and designated as confidential, or obtained by Recipient from a third party or any other source, concerning any aspect of the business or affairs of Discloser, including without limitation, any information or material pertaining to negotiated agreements or documents under negotiation, products, plans, policies, procedures, employees, work conditions, legal and regulatory affairs, assets, inventory, sales, marketing, expenses, business plans, financial statements, customer and supplier lists, costs of goods, relationships with third parties, pricing or other purchasing information. Confidential Information also includes any notes, analyses, compilations, studies or other material or documents prepared by Recipient or a third party for Recipient which contain, reflect or are based, in whole or in part, on the Confidential Information. Confidential Information does not, however, include information in any one of the following categories: (a) at the time of disclosure it is in the public domain; (b) after disclosure it becomes part of the public domain through no fault of Recipient; (c) it is already of record in Recipient's files at the time of disclosure (and was properly received from Discloser without a confidentiality restriction) or thereafter properly comes into Recipient's possession from a third party rightfully in possession thereof and not under an obligation of confidentiality to Discloser; or (d) information independently developed by Recipient without breach of this Agreement. No segment(s), or combinations thereof, of the information disclosed hereunder shall be deemed to be within the foregoing exceptions merely because other individual segments are in the public domain or in Recipient's prior possession or received from third parties.

**2. Title.** Title to all Confidential Information shall remain with Discloser and Discloser shall have exclusive title to any and all intellectual property which is developed from or based upon such Confidential Information. All Confidential Information shall be subject to Discloser's disposition at any time. This Agreement shall not be construed to grant Recipient any right or license, by implication or otherwise, or any other proprietary rights in or to any of the Confidential Information.

**3. Use of Confidential Information/Obligation of Confidentiality.** Recipient agrees to maintain the Confidential Information as confidential and not to disclose it to unrelated third parties or to use it in any manner unrelated to this Agreement, except as otherwise set forth in this Section 3., without the prior written consent of Discloser. Recipient agrees to take all reasonable precautions including the establishment of appropriate procedures to safeguard the Confidential Information and shall: (a) restrict disclosure of the Confidential Information solely to those employees or other authorized persons associated with Recipient (collectively "Employees") whose duties or services justify their need to know such information; (b) advise each Employee of their confidentiality obligations with respect to the Confidential Information; (c) prevent unnecessary duplication or copying of any documents containing the Confidential Information; (d) use the Confidential Information only for the purpose for which it was disclosed or for other purposes specifically designated by Discloser in writing; and (e) obtain Discloser's consent prior to disclosing the Confidential Information to an unaffiliated agent, consultant or person, and arrange for the execution by such consultant or person of a nondisclosure agreement in a form satisfactory to Discloser.

**4. Return of Confidential Information/Officer Certification.** As soon as Recipient's need to have such Confidential Information is completed, or sooner if so requested, Recipient agrees to promptly return to Discloser all Confidential Information and all copies or transcriptions thereof made by or furnished to Recipient and to discontinue and refrain from any use of all such Confidential Information. The return of such Confidential

Information shall not affect Recipient's obligation of confidentiality with respect to the information returned. As an alternative, at the mutual agreement of the Parties, Recipient may destroy all or any designated portion of such Confidential Information. At the request of Discloser, an officer of Recipient's organization shall certify to Discloser that all Confidential Information has either been returned or destroyed, purged from all computer systems used by Recipient or at Recipient's direction, and that all copies thereof and notes, calculations, etc. based on such Confidential Information have been either returned to Discloser or destroyed.

**5. Legal Process/Disclosure.** In the event Recipient is requested to or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand or similar discovery process) to disclose any Confidential Information, Recipient will promptly notify Discloser of such request or requirement so that Discloser may seek an appropriate protective order or other appropriate remedy or waive Recipient's compliance with the provisions of this Agreement. In the event that a protective order or other remedy is not obtained or that Discloser waives compliance with the provisions of this Agreement, Recipient will furnish only that portion of the Confidential Information which is legally required and will use Recipient's best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. Each Party shall have the right to obtain injunctive relief as necessary to prevent the other Party from breaching or remedy a breach of its obligations under this Agreement, or to compel the other Party to perform its obligations under this Agreement. If either Party should bring an action against the other in order to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys fees and costs in addition to any other remedy it may have at law or in equity.

**6. Non-solicitation of employees.** Neither Party shall solicit any employee of the other Party for employment during the discussions covered by this Agreement or for a period of one (1) year thereafter, without the prior written consent of the Party employing such person; provided that, if the Parties reach a definitive agreement on a transaction which is the subject of their discussions hereunder, such solicitation shall be permitted without prior consent of the employing Party.

**7. General.** This Agreement supersedes all prior agreements, understandings and/or communications between the Parties in regard to the subject hereof. This Agreement shall be binding upon any successors to Recipient in the business to which the Confidential Information relates and upon all Recipient's lawful assigns. Amendment of this Agreement shall only be effective if executed in writing by authorized officials of each party hereto. Terms of this Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois applicable to contracts made and to be entirely performed in such state. Any dispute arising out of this Agreement shall be settled by the competent courts of the State of Illinois with venue in Sangamon County.

**8. Severability.** Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail; provided, however, that in the event of any such conflict, the provisions of this Agreement so affected shall be limited or invalidated only to the extent necessary to permit compliance with the minimum legal requirement. No other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

**9. Duration.** This Agreement shall be effective as of the date first written above and the obligations of confidentiality as set forth herein shall remain in effect for a period of two (2) years from the date first written above.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this Agreement effective as of the date first written above.

By: \_\_\_\_\_

By: \_\_\_\_\_

(print name below signature)

Title: \_\_\_\_\_

Title: \_\_\_\_\_